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International Covenant on Civil and Political Rights

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Human Rights Committee

101st session

Summary record (partial)[a] of the 2773rd meeting

Held at Headquarters, New York, on Monday, 14 March 2011, at 10 a.m.

Temporary Chairperson: Mr. Simonović (Representative of the Secretary-General)
Chairperson: Ms Majodina

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[a] No summary record was prepared for the rest of the meeting.

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Any corrections to the record of the meetings of this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

11-26145 (E)

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The meeting was called to order at 10.20 a.m.

Expression of sympathy in connection with the recent earthquake and tsunami in Japan

1. **The Temporary Chairperson** expressed sympathy to the Government of Japan in connection with the recent earthquake and tsunami in that country.

Opening of the session by the representative of the Secretary-General

2. **The Temporary Chairperson** said that since assuming his functions as Assistant Secretary-General for Human Rights in July 2010, the New York Office of the Office of the High Commissioner for Human Rights (OHCHR) had been restructured and strengthened through the establishment of teams dedicated to human rights issues, country-specific issues, external relations and outreach, and intergovernmental affairs. The New York Office was also working to strengthen ties between New York, Geneva and the field.

3. A number of important developments had taken place since the Committee's last session. Following the High Commissioner's call in 2009 for the initiation of a process of reflection on ways to strengthen the treaty body system, three major documents had been adopted: the Dublin Statement on the Process of Strengthening of the United Nations Human Rights Treaty Body System, the Marrakech statement on strengthening the relationship between national human rights institutions and the human rights treaty bodies system, and the Poznan statement on the reform of the United Nations human rights treaty body system. A meeting of the Working Group on Follow-up to Concluding Observations, Inquiries, Visits and Decisions of the inter-committee meeting of human rights treaty bodies, held in Geneva from 12 to 14 January 2011, had focused on the follow-up procedures relating to concluding observations, decisions on communications, visits and inquiries, including an assessment of their effectiveness; the points of agreement decided at that meeting would be transmitted to the twelfth inter-committee meeting, to be held in June 2011. Consultations with States parties, to which the chairs of all treaty bodies would be invited, were scheduled for 12 and 13 May in Sion, Switzerland. Further consultations between United Nations institutions and civil society were planned for later in the year, as was a meeting in Dublin to close the consultative process.

4. Since the day of consultations held in October 2010, the Committee on the Elimination of Discrimination against Women (CEDAW), the Committee on the Rights of the Child (CRC) and the Committee on the Elimination of Racial Discrimination (CERD) had taken part in similar exchanges. The objective of such consultations was to provide treaty bodies with the opportunity to discuss in advance the topics to be considered at the twelfth inter-committee meeting and to create a forum for discussing the strengthening of working methods. The High Commissioner welcomed the commitment expressed by all chairs to advance the treaty body strengthening process.

5. The General Assembly, at its sixty-fifth session, had adopted a number of resolutions to address the backlog of States parties' reports and individual complaints. Moreover, the Secretary-General had been requested to submit concrete, tailored proposals on the human rights treaty bodies, including the Human Rights Committee, to improve their effectiveness and better manage their workload.

6. The Open-ended Working Group of the Human Rights Council on an optional protocol to the Convention on the Rights of the Child to provide a communications procedure had adopted a draft optional protocol in February 2011. The draft would be placed before the Human Rights Council for formal adoption in June 2011 and before the General Assembly for approval at its sixty-sixth session.

7. Guinea-Bissau had ratified the Covenant on 1 November 2010 without reservations, bringing the total number of States parties to 167. Kyrgyzstan had ratified the Second Optional Protocol to the Covenant on 6 December 2010, bringing to 73 the total number of States parties to the Protocol.

8. OHCHR continued to note the concerns of the treaty bodies with regard to servicing. The Office worked closely with all the relevant units of the United Nations Office at Geneva to ensure that the highest possible level of servicing was provided to the treaty bodies. However, the demands on the conference servicing units in Geneva had grown significantly in recent years without the requisite increase in resources. OHCHR and the chairs of treaty bodies had worked to draw the attention of the General Assembly to the need

for additional human resources for any request for additional meeting time or new treaty-based requirements.

9. For its part, the Office was working to streamline procedures across all the treaty bodies and had begun discussions with the translation services and other units to identify the most efficient use of the limited resources available to them and to the Office. He understood that States parties also struggled to produce focused reports and noted the ongoing discussion on the structure and length of concluding observations within the inter-committee meeting. He looked forward to receiving feedback about the Committee's experience with the new optional reporting procedure involving focused reports based on replies to lists of issues prior to reporting, which had the potential to enhance the quality of States parties' reports and deepen the understanding of key challenges, thus facilitating more targeted reports and concluding observations.

10. OHCHR had made great strides with regard to staffing for the treaty bodies, including by providing a strengthened core team to service the Committee. During the current session, the Committee would consider four periodic reports as well as the country situation in Seychelles in the absence of a report. The Committee's country report task forces would adopt lists of issues on the periodic reports of the Islamic Republic of Iran, the Dominican Republic, Norway and Yemen, as well as a list of issues in respect of Malawi, a State party whose initial report was long overdue. In addition, the Committee would consider a large number of communications and the progress report submitted by the Special Rapporteur for follow-up on Views, and would begin the second reading of its draft general comment No. 34 on article 19 of the Covenant.

11. OHCHR had organized an expert workshop for Europe on the prohibition of incitement to national, racial or religious hatred in Vienna on 9 and 10 February 2011. It was the first in a series of workshops which aimed to achieve a better understanding of relevant legislative patterns, judicial practices and policies throughout the world; to discuss the state of implementation of the prohibition of incitement to hatred in conformity with international standards; and to identify possible actions at all levels. The first workshop had been well attended, with around 100 participants, including one Committee member; a report on the discussions was forthcoming. The next workshop would take place in Nairobi on 6 and 7 April 2011 for the African region; Ms. Majodina would participate in the event.

Solemn declaration by the newly elected members of the Committee in accordance with article 38 of the Covenant

12. *At the invitation of the Temporary Chairperson, the new members of the Committee — Mr. Flinterman, Mr. Neuman and Ms. Waterval — solemnly undertook to discharge their duties impartially and conscientiously, in accordance with article 38 of the Covenant and rule 16 of the Committee's rules of procedure.*

Election of the Chairperson and other officers of the Committee

13. **Mr. Bouzid** nominated Ms. Majodina for the office of Chairperson.

14. **Mr. Thelin**, **Ms. Chanet** and **Ms. Motoc** seconded the nomination.

15. *Ms. Majodina was elected Chairperson by acclamation.*

16. *Ms. Majodina (Chairperson) took the Chair.*

17. **The Chairperson** thanked the Committee for the confidence it had placed in her and called for nominations for three Vice-Chairpersons and one Rapporteur to complete the Bureau.

18. **Mr. Rivas Posada** nominated Mr. Iwasawa, Mr. O'Flaherty and Mr. Salvioli as Vice-Chairpersons and Ms. Keller as Rapporteur.

19. **Ms. Motoc** seconded the nominations, but stressed the importance of equitable geographical distribution in such matters, specifically with regard to Eastern Europe, which was often overlooked as a region.

20. **The Chairperson** said she took it that the Committee wished to elect the nominees by acclamation.

21. *It was so decided.*

Adoption of the agenda

22. *The agenda was adopted.*

Organizational and other matters

23. **Mr. Thelin**, speaking as Chairperson/Rapporteur of the Working Group on Communications, said that the Working Group, composed of 10 members of the Committee, had met from 8 to 11 March 2011, at which time he had been elected Chairperson. The Working Group had considered a total of 26 communications, of which one had been deferred, one had been referred directly to the plenary, and two had been left in abeyance owing to a misunderstanding between the Secretariat and the Rapporteur. Of the remaining 22 communications, the Working Group had decided that one should be declared admissible and five, inadmissible, and that the remaining 16 should be dealt with on the merits; of those 16 cases, the Working Group had determined that there had been violations in 12.

24. The Committee must consider ways to address its backlog of some 300 cases, which would only increase in the future. It was necessary to maintain five days of meetings for the Working Group, rather than the four days that had been planned most recently. In addition, the Committee should review its working methods with a view to preventing any miscommunications between the Secretariat and the Rapporteur of the Working Group. One suggestion might be for the Secretariat to set a time limit for rapporteurs to deal with the cases assigned to them. It was important to remember that behind each case there was a human author who had the right to expect an answer from the Committee.

25. **Ms. Chanet** said that she was in favour of maintaining the five-day working period for the Working Group. As for the suggestions made to facilitate consideration of communications, she suggested that the Committee should consider them during its discussion of working methods. Specifically, clarification would be needed as to the procedure proposed for reassigning cases and for ensuring rapporteurs' access to the necessary files.

26. **Ms. Motoc**, stressing that communications were central to the Committee's work, said that the participation of all Committee members in the Working Group on Communications should be encouraged, if the budget allowed it. She suggested scheduling the Working Group meetings for July, which might facilitate the attendance of the Committee members with university commitments and thus avoid quorum-related problems. She welcomed the proposals made regarding the working methods of the Working Group and suggested that Mr. Thelin should submit them in writing for discussion by the Committee under working methods.

27. **Sir Nigel Rodley** said that addressing the backlog was not merely a question of holding an additional day of meetings for the Working Group; indeed, the Secretariat had to be in a position to provide the Working Group with a sufficient number of drafts to consider during its working period. At its most recent series of meetings, the Working Group had been able to discuss all the cases available to it in just four days. It was necessary to appeal to the High Commissioner for Human Rights and other relevant authorities to ensure that sufficient resources were allocated to the Secretariat so that the Committee could begin to tackle its backlog.

28. **Mr. Thelin** said that both Committee members and the Secretariat shared responsibility for the fact that the Working Group had met during the previous week for four days rather than five. Moreover, in October 2010, the Working Group had not been able to carry out its work for lack of a quorum. There were therefore several aspects to address in seeking to improve working methods on communications. Lastly, while the Secretariat did excellent work within its means, it was a fact that additional resources were needed.

The meeting rose at 11.10 a.m.

United Nations CCPR/C/SR.2774

International Covenant on Civil and Political Rights

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Human Rights Committee
101st session

Summary record of the 2774th meeting
Held at Headquarters, New York, on Monday, 14 March 2011, at 3 p.m.

Chairperson: ..... Ms. Majodina

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Consideration of reports submitted by States parties under article 40 of the Covenant

Fourth periodic report of Togo

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11-26151 (E)

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The meeting was called to order at 3 p.m.

Consideration of reports submitted by States parties under article 40 of the Covenant

Fourth periodic report of Togo (CCPR/C/TGO/4, CCPR/C/TGO/Q/4 and Add.1)

1. *At the invitation of the Chairperson, the members of the delegation of Togo took places at the Committee table.*

2. **Ms. Wilsen-de Souza** (Togo), introducing the State party's fourth periodic report (CCPR/C/TGO/4), said that it had been prepared by the inter-ministerial drafting committee for initial and periodic reports on human rights in collaboration with the Country Office of the Office of the United Nations High Commissioner for Human Rights (OHCHR) in Togo, the National Human Rights Commission and civil society. Difficulties encountered in preparing the report included lack of relevant and recent data and insufficient resources.

3. Firmly committed to democracy, the Government of Togo had made a number of reforms since the presidential election of 2005 that had earned it the renewed trust and support of the international community. Following consultations with the European Union, it had entered into 22 undertakings aimed at strengthening democratic institutions and respect for human rights and a State based on the rule of law. It had also initiated a national political dialogue that had resulted in the signing of the Global Political Accord in August 2006; implementation of that agreement, as well as another signed by her Government and OHCHR for the establishment of an OHCHR Country Office in Togo, had paved the way for the peaceful holding of legislative elections in October 2007.

4. Togo had adopted a number of human rights instruments since the submission of its last periodic report. Provisions of those instruments, as well as of the Covenant, dealing only with citizens' rights could be invoked before Togolese courts, which were required to apply them. On the other hand, those provisions defining an act or a fact as an offence could not be applied until they were brought into conformity with domestic law and appropriate punishments were established at that level. Training on the provisions of the Covenant had been organized for lawyers, judges and members of the defence and security forces.

5. Act No. 2005-04 of 9 February 2005 confirmed the independent status of the National Human Rights Commission. Complaints could be submitted by any person who believed his or her rights had been violated, as well as third persons or non-governmental organizations (NGOs). In April 2008, the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights had accredited the National Human Rights Commission with A status, thus validating its compliance with the Principles relating to the status of national institutions (Paris Principles).

6. Human rights violations during the presidential election of April 2005 would be at the heart of the work of the Truth, Justice and Reconciliation Commission. The Commission was currently examining statements made during hearings in order for the Government to settle definitively any issues of participation in public affairs and incitement to racial hatred. The Commission must conclude all investigations and hearings before any proceedings were initiated. While the Commission's work did not preclude prosecutions, it could not replace a judicial process aimed at establishing individual criminal responsibility.

7. The promotion of women and gender equality were key objectives under the 2010 programme of action submitted by the Prime Minister of Togo to the National Assembly. Such objectives were to be achieved through the consolidation of laws protecting women against gender-based violence and, more broadly, through educational initiatives aimed at keeping girls in school. The Government was particularly concerned with the situation of rural women and hoped to ease their burden through the introduction of technology; access to land, water and agricultural training; and assistance for the creation of cooperatives and agri-food associations. The Government also sought to empower women professionally. Thus, the most recent competitive examinations for civil servants had led to the hiring of women in areas traditionally reserved for men, such as the police, prisons and the army. Women remained underrepresented, however, in decision-making positions: just 7 of 31 posts in the Togolese Administration were occupied by women, and a mere 9 of the 81 seats in the National Assembly belonged to women.

8. The lack of computerized data made it difficult to collect reliable data on the complaints filed with regard to violence against women; nevertheless, the non-governmental association Groupe de Réflexion Femme Démocratie had cited 78 cases of violence against women in 2009. Although a raft of new legislation, including the new draft Criminal Code, contained provisions aimed at better protecting the rights of women, Togolese women continued to suffer human rights violations, particularly as a result of domestic violence and discriminatory inheritance laws.

9. In June 2009, the National Assembly had adopted a law abolishing the death penalty in Togo through the commutation of all death sentences to life imprisonment. Furthermore, all acts of torture were strictly prohibited, although practical steps were needed to make that provision fully effective. Thanks to the work of human rights organizations and the Ministries of Security and Defence, incidents of torture in detention centres had decreased considerably; a few isolated cases during preliminary investigations should nevertheless be noted. Such incidents could be attributed largely to meagre resources and lack of awareness of the relevant legislation. Training for law enforcement officials and forensic doctors had been designed to include international human rights law, in particular on the prohibition of torture. Events during the 2005 elections, however, had proven the need for ongoing training; the Government therefore regularly organized awareness-raising events for law enforcement officials and civilians in respect of human rights principles and the prohibition of torture, and planned to establish a national mechanism on the prevention of torture.

10. Recognizing that Togo was a country of origin, transit and destination for child trafficking, the Government had taken steps to address the problem through legislation, social programmes, and prosecution of the perpetrators. In addition, it planned to establish a national social protection policy and to set up a cash transfer pilot project in order to deal with the underlying issues of poverty.

11. With regard to the right to liberty and security of the person, Togo had a large number of privately owned media that provided information on a wide range of topics and in many languages. The Constitution provided for the right to refer any allegedly arbitrary arrest or custody to the relevant judicial authority; it was important to note, however, that that authority had not been established by law. Under the preliminary draft Code of Criminal Procedure, the president of the court or the judge designated by the president acquired competence to exercise habeas corpus.

12. In Togolese law, charging was governed by the Code of Criminal Procedure. Arresting an individual for civil or commercial debt was formally prohibited. Nevertheless, persons detained for offences associated with civil or commercial debt could be found in places of detention. For the most part, offences such as breach of trust or fraud were presented by detainees as debt. The absence of an exhaustive list of contracts or conventions that might not be described as fraudulent sometimes led officials or judicial police officers to misunderstand civil or commercial situations as criminal offences, describing them as fraud or breach of trust.

13. To rectify that shortcoming, a series of training programmes for judicial police officers and constables, both on the procedure for preliminary investigation and on techniques for the interpretation of texts and description of facts, was being conducted as part of the national programme for the modernization of the judicial system.

14. Turning to the issue of the treatment of detainees, she said that the overcrowding of prisons was an ongoing problem in Togo. The Government had sought to remedy it by building a new prison in the city of Kpalimé in conformity with international standards, and by providing for separate judges responsible for oversight of detention and freedom, as well as for alternative sentences, in its preliminary draft Code of Criminal Procedure. In addition, it had increased the operating budget of the Department for Prison Administration and Reintegration. Regrettably, however, such measures remained insufficient to improve significantly the conditions of detention.

15. According to article 52 of the Code of Criminal Procedure, custody was limited to 48 hours, renewable once with the authorization of the Public Prosecutor, except in the case of drug-related or serious or complex offences, in which custody could last up to eight days. Given the difficulties involved in enforcing such rules, the Code of Criminal Procedure allowed the Public Prosecutor to make unannounced visits to detention centres in order to release persons who had been detained beyond the stated limits. Similar provision

had been made for visits by the International Committee of the Red Cross and the National Human Rights Commission. Lastly, the Government had provided, by decree, for the general inspection of investigation centres and the penalization of officials who violated the law in respect of periods of detention and custody.

16. Under the Constitution, all Togolese citizens could move freely throughout the national territory. While the Constitution also provided for the right of all citizens to a fair trial and equality before the law, poor infrastructure and an insufficient number of judges hampered implementation of that provision. The Government had therefore recently undertaken to modernize the judicial system. As part of those efforts, a minimum of 20 judges and a number of clerks had been hired annually since 2007 and a training centre for judges and court officers had been established in 2010. Regrettably, although legal aid was guaranteed by law, no funds had been earmarked for it. The fees of legal counsel assigned to indigent accused were included in the criminal justice expenditures.

17. The freedom of religion was enshrined in article 25 of the Constitution. As for the freedom of expression, which was protected by the new Press Code, the Government had revised the statute and mandate of the High Audio-visual and Communications Authority (HAAC) in 2005 and 2009 with a view to improving its effectiveness. The freedom of association was also provided for in the Constitution; to be recognized, an association must first submit the necessary documentation to the Ministry of Territorial Administration, Decentralization and Local Communities. While the Constitution set down the principle of freedom of assembly, in practice, the need to respect such freedom must be reconciled with the need to preserve the public peace. On the basis of a consensus among various political actors and human rights organizations, a draft law had recently been adopted which set out the conditions for exercising the right of peaceful assembly and protest on the public highway or other public places.

18. Turning to the issue of rights of persons belonging to minorities, she said that ethnic and religious minorities had the right to practise their religions, to give open expression to their cultural lives and to use their own language. The official language in Togo was French. To date, the Government had not received any special demands from groups claiming to be minority groups who considered themselves debarred from the enjoyment of their rights for those reasons.

19. The Government, in collaboration with the National Human Rights Commission, the OHCHR Country Office in Togo and civil society, had taken steps to disseminate information about the provisions of the Covenant through training workshops on international human rights instruments and awareness-raising campaigns on universal freedoms.

20. **The Chairperson** invited queries from the Committee on questions 1 to 15 in the list of issues (CCPR/C/TGO/Q/4).

21. **Mr. Salvioli** said that it was regrettable that despite the training organized for public officials, lawyers and judges since the State party's submission of its third periodic report, the provisions of the Covenant had still not been directly invoked by any parties to proceedings or directly applied by any of the country's courts. He would like to know what steps the reporting State had planned to remedy the situation.

22. While welcoming the 2005 legislation aimed at bringing the Truth, Justice and Reconciliation Commission into line with the Paris Principles, he said that the reduction in the Commission's operating budget since 2008 was a cause for concern, as lack of funds would necessarily reduce its scope of activity. Furthermore, information had been received according to which the reporting State did not always take into account the opinions of the Commission.

23. Turning to question 7 on the list of issues, he enquired as to the practical steps being taken by the State to effectively criminalize torture in the Criminal Code, a point that had already been raised in the 2006 concluding observations of the Committee against Torture. It was important to recall that when States ratified an international agreement, they committed to making the agreement immediately effective; otherwise, they were considered not to be in compliance.

24. He welcomed the information provided by the State party on granting non-governmental organizations (NGOs) access to detention centres. It would be interesting to have a full account of any cases in which such visits were not allowed, for instance, the 19 people being held by the Agence Nationale de Renseignement (National Intelligence Agency), in

which visits by family and lawyers were not permitted. The reporting State should clarify what steps had been taken to remedy the situation and whether it was investigating the threats received by the detainees' spouses following a protest they had held. With regard to the death of Kossi Koffi in March 2010 following his transfer to a Lomé civil prison after eight days of custody, reportedly as a result of torture at the hands of the authorities, it would be useful to learn whether the alleged perpetrators had been prosecuted. The penalties imposed for acts of torture as described by the reporting State seemed mild and of an administrative nature. Furthermore, according to information received from NGOs, allegations of torture had not led to the initiation of proceedings. He would be grateful for details of any progress made in that regard.

25. Noting the legislative amendments that had been made in respect of minors and their detention, he said that the Committee had been informed that only the administrative division of Lomé had judges specially assigned to minors and separate holding facilities for minors. He would like to know whether that was still the situation and, if so, how the reporting State planned to change it. He had similar questions regarding the issue of overcrowded prisons, about which the Committee had already expressed concern in its concluding observations on Togo's third periodic report.

26. **Mr. O'Flaherty** praised the delegation for the quality of its self-criticism, which was an unusual and good practice that other States might emulate. The quality of the submissions by NGOs and the National Human Rights Commission was also impressive. Addressing questions 4 and 5 in the list of issues (discrimination against women and violence against women), he said that although draft legislative responses were being developed, it was difficult to tell when a law would actually take effect. Information on the causes of the delay would be welcome.

27. Turning to non-legal strategies to support women's place in society, he asked whether women's empowerment programmes were reaching out to women, especially in rural areas. He also wished to know what the Government was doing to raise men's awareness of gender discrimination and inequality, and to educate schoolchildren about gender equality issues.

28. Noting that quotas were in place for the recruitment of women to senior public service positions, he asked how they were implemented and how effective they had been.

29. While it was understandable that the lack of computerization made it difficult for the Government to provide disaggregated statistics on violence against women, it was unfortunate for a State party to have to resort to obtaining such data from non-governmental sources. It would be helpful to understand what the Government could do to strengthen its capacity to gather the necessary disaggregated data.

30. Noting that homosexual activity was criminalized under article 88 of the Criminal Code, he requested information about efforts to repeal that legislation, which contravened the Covenant.

31. Taking up questions 13 and 14 in the list of issues (treatment of detainees), he said that the report by Manfred Nowak, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, highlighted areas requiring attention, namely, an unacceptably low staff-to-prisoner ratio, the division of control over prisons between two different ministries, the delegation of authority to "senior" prisoners over other prisoners and corruption throughout the criminal justice system (A/HRC/7/3/Add.5, paras. 34, 37 and 38). Information on initiatives being taken to address those problems would be welcome. The reporting State should also indicate whether it was true that police were depriving prisoners of their clothing without any valid, security-based justification. Lastly, the one-week initiative allowing the public to visit prisons was a good practice that might be replicated in other States.

32. **Ms. Waterval**, focusing on the 2005 presidential election, asked when the Truth, Justice and Reconciliation Commission would complete its mission and issue its conclusions. Information about any monetary and personnel resources that the Government had allocated for the Commission's investigation into that election would be welcome. She wondered about the status of persons detained in 2005 in connection with election-related events. Details should be provided on any penalties that had been imposed on those political leaders and journalists who had incited ethnic hatred during the 2005 electoral process. What measures had been taken in the aftermath of those events to prohibit all acts of ethnic hatred?

33. In addition, she wished to know how many complaints of torture or ill-treatment had been filed against public officials, whether any officials had been prosecuted for such acts, and what penalties had been imposed, if any.

34. Turning to question 10 (right to liberty and security of the person and imprisonment for debt), she asked how many times opposition activists had been arrested in 2010 and how many of those arrests had been lawful. Could the delegation clarify whether the arrests of Kpatcha Gnassingbé, Augustin Glo'kpon, Jacob Benissan and others had been made pursuant to a lawful warrant? A list of incarcerated opposition activists and sympathizers would also be useful. Lastly, she wondered what steps had been taken to ensure that police respected the 48-hour limit on holding detainees in custody; what complaint mechanisms, if any, were available to those detained illegally for prolonged periods; and what measures had been taken to provide adequate reparations and compensation to such persons.

35. **Ms. Chanet** said that she was pleased about the abolition of the death penalty but surprised that the State was claiming the Covenant had not been invoked before the courts. There was evidence that the Covenant had indeed been invoked at times by attorneys, but that the courts had paid it no heed. She wished to know why there were no references to the Covenant in judicial rulings.

36. She also enquired about progress in reforming the Constitutional Court, which had been envisaged under the Global Political Accord signed in 2006.

37. Referring to article 88 of the Criminal Code, which penalized homosexual acts, she noted that it remained in force despite plans to remove it, and asked whether there were any pending prosecutions under that article. She was sceptical about the effectiveness of a proposed plan to recommend monogamy rather than prohibit polygamy and would appreciate further information on the Government's thinking in that regard.

38. Regarding torture and article 9 of the Covenant, she said that the State party seemed to have made little progress in incorporating the definition of torture into its law and defining the punishment of the specific crime of torture. Mr. Nowak's report referred to a Ministry of Justice circular allowing persons detained during a preliminary investigation to have access to a lawyer after 24 hours, for a duration of 15 minutes. She asked why that important albeit insufficient provision had not been enacted into law, and whether it applied to all detainees, without exception, including those held by the National Intelligence Agency. Furthermore, the issue of police custody was governed by the Public Prosecutor's Office, which did not meet the criteria for "independent" authority set out in the Covenant. She wished to know whether there was a plan to assign judges responsibility for overseeing police custody rather than the Public Prosecutor's Office. Lastly, she would be grateful if the delegation could explain how some debtors had been mistakenly jailed even though the Public Prosecutor's Office oversaw police custody.

39. **Ms. Motoc** enquired about reports that the Commission set up to investigate the events of 2005 had not worked effectively and had received no Government financing to carry out its mandate. According to NGO sources, high-level Government officials, including the President of the National Assembly, had denied that those events had ever occurred. Could the delegation comment on those matters?

40. She requested information on efforts to eradicate female genital mutilation, on customary law as it related to the status of women, and on any measures taken to limit the power that tribal chiefs exercised in that regard under customary law. On the topic of arbitrary detention and torture, she cited reports by Amnesty International that political activists had been arrested amid fears of torture, and asked for an update on that situation.

41. **Ms. Keller** asked about prison conditions and the situation of female prisoners. She cited paragraph 53 of Mr. Nowak's report, which stated that none of the country's prisons or custody facilities employed any female guards. The Government had indicated that the problem was being resolved through the creation of a special supervisory body under the Ministry of Justice. She enquired about its status and about efforts to ensure that the needs of female prisoners were being met.

42. **Mr. O'Flaherty**, referring to question 15 in the list of issues (treatment of detainees), expressed concern that the State party did not have statistics on the number of people who had died in custody prior to 2010, and that, moreover, there had been no investigations into the causes of any of those deaths.

He asked whether the Government had continued to gather figures on such deaths since 2010 and stressed that all deaths in custody must be properly investigated, even in cases where the family of the deceased claimed it did not want an investigation.

43. **Mr. Bouzid** requested information about the type and amount of damages awarded in cases under review by the National Human Rights Commission.

The meeting was suspended at 4.40 p.m. and resumed at 5.10 p.m.

44. **Mr. Hamadou** (Togo) welcomed Mr. O'Flaherty's recommendation on investigating the deaths of detainees. The Government was aware that the budget of the National Human Rights Commission was insufficient and planned to fight for a substantial increase in funding. Such funding, however, was contingent on the amount of financial aid provided to Togo in connection with its status as a least developed country, among other things.

45. Responding to comments that the State had paid no heed to the recommendations of the National Human Rights Commission, he said that there may have been a misunderstanding because, in the case of the death of Atsutsè Agbobli, there had been an international inquiry carried out under the aegis of the OHCHR Country Office in Togo. However, two different investigations had produced two contradictory reports, resulting in an ambiguous situation. Nevertheless, the Government remained open to further investigations.

46. Suggesting that the criticism concerning the composition of the Truth, Justice and Reconciliation Commission had been unjustified, he said that its composition had been decided under the aegis of the OHCHR Country Office, through a consultative process that had included citizens, but not the Government. Members of civil society organizations had elected their representative to sit on the Commission. It was also incorrect to state that the Government had not provided support to the Commission; in fact, the Commission's budget was larger than that of some Government ministries. The Commission prepared its own budget, but because of budgetary constraints, the Government had only partially met the Commission's funding request. Nonetheless, the Government had provided the Commission with adequate funding to carry out its work. Because it did not meddle in the Commission's work, the Government could not provide details of its internal workings. The Government awaited the Commission's proposals; if they included sanctions, the Government would enforce them under the law. The Commission had reported that it had received nearly 22,000 complaints and was studying them in order to make recommendations to the Government.

47. It was imperative to implement international conventions and treaties, but domestic laws had to be amended in order to incorporate them, especially the Constitution, which was the supreme law of the land. The legal system was therefore being modernized and all laws were being reviewed.

48. He agreed that the domestic law of Togo did not contain a definition of torture. The new Criminal Code would include a definition and prescribe much harsher penalties for specific violations.

49. Imprisonment for civil debt was unacceptable and the Government was combating that practice. All law enforcement officers would have to be made more aware of the need to prevent such detentions.

50. With regard to the reform of the Constitutional Court, the Government had made it a priority to complete the process well in advance of the presidential elections and had used a consensus-based approach to do so.

51. The National Intelligence Agency was, by definition, not subject to the normal judicial process and the individuals detained by it were held pursuant to an order of the judge overseeing those cases. He had personally accompanied civic leaders on a visit to see the detainees in question and the Government had taken note of the recommendations that had been made as a result of the visit. The International Committee of the Red Cross had also visited the prisoners as recently as February 2011. While the Government could not become directly involved in the prison visits, all measures had been taken to ensure that family members and lawyers could visit the detainees. In line with the principle of separation of powers, the Government avoided meddling in the judicial process but did everything to ensure that detainees were held in dignified conditions that conformed to international standards.

52. The Ministry of Justice circular concerning the right of legal counsel to visit clients held in police custody was an anomaly, and had been intended to fill

a void in the law, which originally had no such provision. Prior to assuming his current post in the Government, he had personally lobbied the Ministry to address that oversight. He agreed that legislation was needed to formalize the provisions of the circular and an effort would be made to address the matter.

53. Regarding the number of detainees belonging to the political opposition, he noted that arrests were made on the basis of the acts they had perpetrated rather than their political affiliation. Following the 2010 presidential elections, supporters of both candidates had been arrested for engaging in violence. While political activists had been arrested in Atakpamé, in Ogou Prefecture, and sentenced to imprisonment, all had been set free following an order by the President to ease tensions. All individuals detained in connection with the 2010 presidential elections had since been released.

54. With regard to the events of 2005, some of the individuals being investigated had been released while others remained in detention. While the investigation was nearing resolution, the Government did not possess details for those cases. The principle of the separation of powers forbade the executive branch from inquiring about the actions of the investigating judges.

55. As part of the broader revision of the Criminal Code, the Government would review the texts used in the past to punish individuals for incitement to ethnic hatred and violence and stipulate appropriate sanctions for such acts.

56. With respect to sanctions for impunity, he recalled the 22 undertakings that had been made by the Government and the Global Political Accord which emphasized the need to address the problem of impunity and had led to the creation of the Truth, Justice and Reconciliation Commission. Individuals who were not satisfied with the work of the Commission could seek further redress in the courts. Impunity had caused great harm in Togo and the Government wished to prevent its recurrence.

57. With regard to the complaints filed by the Collective of Associations against Impunity in Togo (CACIT) with the Justice Department, it was the responsibility of CACIT lawyers to use the existing judicial mechanism for resolving such complaints. While a review of legal instruments that were slowing down the judicial process might be warranted, the Government could not ask judges to either expedite or delay the work of the courts without setting a dangerous precedent and imperilling the country's democracy. The legal system needed to remain independent and autonomous from the dictates of the executive branch, which was not the object of those complaints and had no reason to become involved.

58. **Mr. Kodjo** (Togo) said that the inclusion of the definition and prohibition of torture in the Criminal Code had been delayed by the death of the lead expert conducting the review of the draft Criminal Code. Efforts were under way to recruit a new expert in order to conclude the review process. The revised Criminal Code would also address the practice of imprisoning debtors. Measures had been taken to resolve existing cases of such detentions, which occurred during the preliminary investigation phase.

59. In addition to the brigade for minors in Lomé, separate quarters for the detention of minors existed in prisons located in other cities. More generally, the Government's policy was directed at ensuring the reintegration of minors into society, rather than their continued detention.

60. Responding to questions concerning prison overcrowding, he noted that existing prisons had been built during the colonial era and were no longer sufficient, due to demographic trends and growing crime rates. The new prison being built in Kpalimé was expected to relieve crowded conditions in the Lomé civil prison.

61. While prisons were managed by the Ministry of Justice, the guards were supplied by the Ministry of Security. To compensate for the lack of female guards to oversee female inmates, one third of the 500 newly recruited prison guards were female. The new recruits would also improve the ratio of guards to prisoners.

62. Various other steps had been taken since the visit of the United Nations Special Rapporteur on torture, including a week-long initiative that had enabled the public to visit the prisons and make suggestions for improvements. Detainees had participated in various recreational activities during that week and had been able to voice their preferences, which would be taken into account in the coming year as the Government sought to bring greater variety into their lives.

63. Regarding the number of deaths that had taken place in detention, he noted that while no records had

been kept prior to 2010, the number of deaths in detention in 2010 was known. The Government had preferred to be frank about the lack of investigations of those deaths and intended to conduct investigations of such deaths in the future. In particular, overcrowding in the prisons contributed to the spread of diseases and was the cause of many deaths.

64. Regarding the delegation of authority to prisoners over other prisoners, he noted that the practice had been designed to relieve the shortage in prison guards. Authority was delegated to the most trustworthy prisoners, though not necessarily the most "senior", and was limited to periods of four months in order to prevent corruption. One benefit of that practice was that guards on the outside of the prison could be notified by the prisoners of night-time incidents. The solution was imperfect and efforts would be made to improve it over time.

65. In response to questions concerning female prisoners, he admitted that facilities were insufficient for pregnant or nursing inmates. Nonetheless, they were held in better conditions than their male counterparts.

66. In line with its efforts to improve prison conditions, the Government had launched reintegration programmes, which offered prisoners vocational training that would enable them to find work after prison and were designed to decrease recidivism, which contributed to overcrowding in prisons. Commenting generally on the case of Mr. Kossi Koffi, he remarked that prison managers needed to note when incoming prisoners had suffered from inhumane treatment and provide the necessary medical care before admitting them to the prison.

67. While the Public Prosecutor's Office had been temporarily tasked with overseeing detention in policy custody, the new Criminal Code would establish a special court or *juges des libertés et de la detention* (custodial judges) appointed by that court for the purpose of determining whether an individual should be incarcerated.

68. With regard to article 88 of the Criminal Code on homosexual activity, there had been no cases where it had been applied in the 17 years he had served as a judge and no individuals had been put on trial or imprisoned in connection with it.

69. With regard to the detention of minors, he reassured the Committee that, in line with the national policy on the reintegration of minors and the provisions of the Children's Code, a new law would create a separate entity for minors' affairs that would remove minors from the penitentiary system. The brigade for minors would depend on the penitentiary system and consequently on the Ministry of Justice.

70. Regarding the practice of depriving detainees of clothing when in police custody, a great deal of effort had been made following the visit of the Special Rapporteur on torture to change this practice and while detained individuals continued to be searched, they were allowed to keep their clothing.

71. Lastly, he noted that the application of the Covenant's provisions depended on the situation. While there was no hindrance to applying provisions concerning the rights of citizens, domestic law had not yet been harmonized with those provisions calling for penalties.

72. **Mr. Hamadou** (Togo) said that, after legislators rejected language prohibiting polygamy, an awareness campaign had been launched to lay the groundwork for including it in the draft Criminal Code.

73. As for educating the public on the prevention of violence against women, Togolese men had already "woken up" and were fighting hard for the principle of gender equality and against gender-based violence. An awareness campaign designed to reach the general public and another campaign specifically targeting preschool and school-age children addressed the issue of violence against women. In addition, penalties for perpetrating violence against women would be included in the new Criminal Code.

74. In response to the question concerning the denial of the events of 2005 by the President of the National Assembly, the Government had considered it unnecessary to pursue the matter further after the individual in question delivered a public apology for his remarks. Nor had that decision prevented the Truth, Justice and Reconciliation Commission from continuing its investigation of said events.

75. **Mr. O'Flaherty** said that he would welcome a response from the delegation concerning the prolonged delays in the adoption of draft laws. He also wished to know whether the delegation disagreed with the assessment of the Special Rapporteur on torture in

paragraph 68 of his report regarding the respective roles of the Ministry of Security and the Ministry of Justice in the management of the prisons.

76. While welcoming the fact that article 88 of the Criminal Code was not being actively enforced, he insisted that it nonetheless posed a problem. As the Committee had stated in its decision in *Toonen v. Australia*, the very existence of the prohibition on sexual activity between consenting adults of the same sex was the problem, as it created a climate of fear and contributed to the marginalization of those individuals in society. That prohibition should be removed altogether.

77. **Mr. Salvioli** said that while he understood the desire to keep the branches of government separate, the executive branch should still be able to make inquiries with regard to the adoption of certain legislative or judicial instruments.

78. Noting the State's claim that lawyers and family members had been permitted to visit detainees held by the National Intelligence Agency, he asked the delegation to comment on the demonstration held on 12 February 2011 by the detainees' wives, who had complained of not having been able to see their husbands for two years. He would also welcome comments in response to claims that threats had been made against those women.

79. Concerning the detention conditions of minors, he wished to know whether minors were separated from adult inmates at the prisons in Kara, Sokodé, Atakpamé and Mango.

80. He also asked when legislation criminalizing torture would be adopted and how engaging in torture and abuse with impunity would be addressed. Similarly, he wished to know when provisions prohibiting discrimination against women would be adopted and when the provision banning homosexual relations between adults would be repealed.

The meeting rose at 6 p.m.

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101st session

Summary record of the 2775th meeting

Held at Headquarters, New York, on Tuesday, 15 March 2011, at 10 a.m.

Chairperson: ..... Ms. Majodina

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Organizational and other matters (*continued*)

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11-26273 (E)

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The meeting was called to order at 10 a.m.

Consideration of reports submitted by States parties under article 40 of the Covenant (*continued*)

Fourth periodic report of Togo (*continued*)
(CCPR/C/TGO/4, CCPR/C/TGO/Q/4 and Add.1)

1. *At the invitation of the Chairperson, the members of the delegation of Togo took places at the Committee table.*

2. **The Chairperson** invited the members of the Committee to continue putting their oral questions to the delegation of Togo in connection with questions 1 to 15 on the list of issues (CCPR/C/TGO/Q/4).

3. **Mr. Flinterman** said that the two draft laws that had been proposed to amend the Individuals and Family Code and the Criminal Code, in an effort to reaffirm the principle of gender equality and combat and eradicate violence against women, had still not been adopted. He wondered whether that could not be ascribed in part to the difficulty of changing a mindset that refused to allow a place for women anywhere other than in the home. It would be useful to know if those draft laws would become law, and whether there were any programmes or policies in place to change the mindset of policymakers and the population as a whole in respect of women's rights.

4. **Ms. Waterval** sought more information about the timeline and process of adoption of laws, and about the ages of minors in detention.

5. **The Chairperson** invited the delegation to continue its replies to the oral questions put by members of the Committee in connection with questions 1 to 15 on the list of issues.

6. **Ms. Azambo** (Togo) said that Togo was in the process of implementing its poverty reduction strategy paper, which included a segment on the protection of women, especially rural women, from violence in all its forms. It also included strategies for social mobilization, raising of public awareness, and encouragement of traditional leaders, decision makers and the population as a whole to protect women's rights. Services were also being provided in rural areas in order to lighten the burden that generally fell on women in those communities. Examples included provision of potable water in villages so that young girls did not have to travel distances to fetch water; establishment of early childhood centres to free girls from the burden of caring for their younger siblings instead of attending school; and building of health centres to reduce child and maternal mortality during childbirth. The Government also provided funds and farming equipment to help rural women improve their lot.

7. The process of amending the Individuals and Family Code and the Criminal Code was ongoing. Social mobilization activities involving the State and civil society were also being undertaken to change mindsets, such as the partnership struck between the Government and a women's non-governmental organization (NGO) for the training of paralegals in remote villages on the promotion of women's rights; and the retreat organized by the Government in 2010 to educate parliamentarians on the need for gender-sensitive legislation and gender-responsive budgeting.

8. Following a 1996 study which found that female genital mutilation affected 12 per cent of women in the country, the Government had taken measures to address it, including the adoption of Act No. 98-16 of 17 November 1998 prohibiting female genital mutilation, and organization of an awareness campaign to educate members of the judiciary, traditional leaders and the general public on the harmful effects of the practice. A follow-up study conducted in 2007 had shown that the practice had declined, affecting 6.9 per cent of women. In fact, activities had even been organized to celebrate the end of the practice in various communities, evidence that efforts to combat the scourge were paying dividends.

9. **Mr. Hamadou** (Togo) said that composition of the delegation, which included high-ranking officers from various fields related to human rights, reflected the Government's determination to combat all forms of torture and human rights violations. Replying to a question put previously about young detainees, he said that while there might have been some isolated cases involving minors who did not have birth certificates and whose ages could not be ascertained, young detainees were never mixed with adult detainees. From an administrative standpoint, prisons fell exclusively under the jurisdiction of the Ministry of Justice, although other ministries intervened in areas where the Ministry of Justice did not have expertise, such as in the provision of prison guards, which was the responsibility of the Ministry of National Security.

10. With regard to alleged threats made against the organizers of a 12 February 2011 demonstration, freedom of assembly and demonstration was recognized in Togo and a demonstration could only be banned for objective and verifiable reasons. Although the Government did its utmost to ensure that the rule of law was respected and that laws that addressed the Committee's concerns were adopted, it still faced certain obstacles on the ground. When it decided to abolish the death penalty, Togo had to tread very cautiously, to make sure that the abolition was final and irreversible, unlike some countries which abolished the practice too hastily, only to later reverse their stance.

11. The Committee should understand that Togo was doing its utmost, because for 20 years when the country experienced nothing but economic crises, devastating torrential rains and hard choices designed to meet the conditions for qualification under the Highly Indebted Poor Countries Initiative, it had been more concerned with survival rather than the adoption of laws. However, as conditions had improved, it would be acting more rapidly to address the Committee's concerns.

12. The National Human Rights Commission made it a point to report any cases of human rights violations that required urgent action. That was the case with the detainee who had been beaten and died while being transferred by the judicial police. When his case had come up, the judge had given instructions to the arresting officers to carry him to the hospital instead of detaining him, but he died from his injuries. The Government had taken that unfortunate case very seriously and had given strict instructions to have the issue resolved and to ensure that no such incident occurred again in future, and that the perpetrators should be brought to justice.

13. With regard to legislation relating to article 88 of the Covenant, the Government was adopting the same slow but cautious approach as it had done with the death penalty. As the majority of the population felt uncomfortable with the practice of homosexuality, it was important not to adopt legislation too hastily, at the risk of hurting the very group that was being protected. On the issue of impunity, the Government had created the Truth, Justice and Reconciliation Commission to shed light on the unfortunate events that had taken place in the country, and to ensure that perpetrators of crimes of hatred were brought to justice and victims were compensated.

14. In response to a question about measures taken to abolish polygamy once and for all, he said that the issue would be addressed in the revised Individuals and Family Code. With regard to the process of adopting laws, the Government generally submitted draft laws to the National Assembly for adoption, but the Assembly could also introduce legislation on its own. Once the texts were adopted, they were forwarded to the President for signature. However, there was no specific time frame for their adoption. With regard to the ages of detainees, while the age of majority was 18, minors could not be detained until they reached 14 years of age.

15. **The Chairperson** invited the Committee to put questions to the delegation regarding questions 16 to 27 on the list of issues.

16. **Mr. O'Flaherty** said that while Togo's statement of intent regarding protection of minority rights under article 27 of the Covenant (written responses, CCPR/C/TGO/Q/4/Add.1, paras. 199 et seq.) was laudable, the Committee had to know what the actual situation was in a country with so many ethnic groups. He asked the delegation to comment on the findings in the 2008 concluding observations of the Committee on the Elimination of Racial Discrimination that ethnically motivated crimes were being committed with impunity (CERD/C/TGO/CO/17, para. 13), that there were insufficient legal safeguards of the right of indigenous peoples to own property and develop their own resources (para. 17), and that certain ethnic groups were underrepresented in both the army and the civil service (para. 18); and to indicate what the Government had been doing to remedy those particular problems.

17. In connection with question 27 on the list of issues, the Government was to be applauded for its plan to hold a workshop on an effective follow-up to the Committee's concluding observations and recommendations. He wondered if it had also considered establishing an ongoing national consultative process regarding human rights, and a universal periodic review process, prior to preparing any report to a treaty body.

18. **Mr. Salvioli**, referring to question 18 on the list of issues, asked whether the Centre for the Training of Judicial Officials (written responses, para. 169) offered

training in human rights, in the provisions of the Covenant and in the jurisprudence of both the Human Rights Committee and the Committee on the Elimination of Discrimination against Women. Since the delegation's position was that the executive branch should have no sway over the judiciary, it would be interesting to hear what was being done to ensure that the competitive examinations for entry into the judiciary were impartial and not subject to ethnic favouritism. Also, more explanation was needed of the "presumption of guilt" (written responses, para. 170), which at first sight seemed incompatible with the due process provisions of the Covenant.

19. With regard to questions 19 and 20, he would like to know when the Government was expected to adopt the draft bill on free legal assistance (para. 172); and how the drafting of legislation to provide compensation for miscarriages of justice was proceeding, how the public was being kept abreast of those discussions and whether there were any administrative services already dealing with that problem.

20. On the question of freedom of expression, assembly and association, Togo maintained (written responses, para. 183) that its restrictions were fully compatible with article 21 of the Covenant, yet it also acknowledged that its High Audio-visual and Communications Authority had taken disciplinary action against certain radio and television broadcasters (para. 185). It was known, in addition, that journalists had been tried for expressing their opinions, had received threats from public officials, including death threats, and had even been attacked by public officials, and that peaceful protest marches had been prevented — all of which were causes for concern. Although the procedures for registration of associations and NGOs had been streamlined (written responses, para. 198), it could still take several years for watchdog groups to receive authorization, thus discouraging the healthy public scrutiny of government that was an essential element of freedom of expression under the Covenant. He noted, however, that Togo had indicated that it took seriously its obligation to listen to its civil society organizations when they demonstrated on behalf of the freedoms of expression, assembly and association.

21. **Ms. Waterval** said that there was no issue with the registration of religious organizations in Togo, but noted, with reference to freedom of expression, that no explanation had been given of the grounds on which the High Audio-visual and Communications Authority suspended the activities of media organizations, or what it had deemed to be the irregularities and excesses (written responses, para. 185) that had justified some suspensions — a number of which seemed to have been intended simply to stifle criticism of the Government. She asked what criteria Togo had established since 2005 to ensure that the Authority was autonomous and did not serve as a political tool, and to provide compensation for any violations by it of the freedom of expression. Could the National Human Rights Commission issue enforceable decisions against the Authority?

22. The Government should review the conditions it had set for authorizing peaceful demonstrations: as outlined in the written responses (paras. 195-197), they seemed intended to discourage participation, in violation of article 21 of the Covenant. She wondered if the Government always scrutinized the reliability of its sources of information before refusing permission, if the police had ever been used to prevent peaceful demonstrations, and if advance notification of human rights demonstrations was still required.

23. **Ms. Motoc** asked, with reference to article 27, where Togo stood on the distinction made in the United Nations Declaration on the Rights of Indigenous Peoples between minorities and indigenous peoples, a distinction that was crucial in terms of rights to land and resources. Many African States, finding it difficult to distinguish between the two, had not signed the Declaration.

24. There had been a number of NGO complaints about Togo's curtailment of freedom of expression and its control over the operations of private radio stations. She asked for comment on two recent closures of stations in opposition to the Government. She would also like information on the impact of the new legislation regulating the freedom of assembly.

25. **Mr. Bouzid**, referring to the protection of internally displaced persons and returning refugees (question 17), asked if the Government had now ratified the 2009 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, and if it intended to sign the 1954 Convention relating to the Status of Stateless Persons. Noting that the same body was responsible for reviewing both the applications and the appeals of refugees seeking repatriation, he wondered if the

Government planned to establish a second committee to separate the two functions.

The meeting was suspended at 11.10 a.m. and resumed at 11.35 a.m.

26. **Ms. Azambo** (Togo) assured the Committee that all levels of Government had adopted a participatory approach to civil society organizations and the media. It had met with civil society organizations to hear their views during the drafting of its periodic report. In December 2010 the Government had set up a formal framework for consultations between the State, civil society, human rights non-governmental organizations and the media. Also, the forthcoming Open Doors initiative referred to in the written responses to question 27, at which all would be invited to express themselves freely, would help the Government to chart its human rights course.

27. **Mr. Kodjo** (Togo) said that the human rights training provided to all judges and court clerks was in the form not of courses but of a series of lectures and seminars reviewing the provisions of all international instruments that could be invoked in the Togolese courts. The programme was already under way under the direction of the National Human Rights Commission. Similarly, all prison officials, who already had military and professional training, would receive special training in the rights of prisoners and the proper conditions of detention.

28. On the "presumption of guilt" issue, the written response was meant not as an explanation of any established legal principle, but rather as a denunciation by the Government of what was unfortunately the usual attitude of the courts towards the accused. Togolese law of course mandated the presumption of innocence, but the courts invariably shifted the burden of proof to the defence, in practice establishing an unjust presumption of guilt. That was what the Government was condemning, and what the country's NGOs had also pointed out.

29. The judicial reform legislation currently before the Assembly called for the establishment of regional administrative courts to supplement Togo's two courts of appeal and the Supreme Court. The regional administrative courts would be able to hear cases of miscarriage of justice and, where appropriate, award compensation.

30. In all prisons in Togo, minors were held in separate quarters, usually in an institution near their community. However, the usual policy of the Government was not to incarcerate minors but to keep them under home surveillance in their families.

31. **Mr. Baragou** (Togo) said that, to maintain ethnic balance, recruitment of security forces was an open, voluntary process based on quotas, and included women. While every effort was made to dedicate an equal amount of time to recruitment in all prefectures, the number of volunteers from each of them varied.

32. **Mr. Hamadou** (Togo) said that a draft law to protect stateless persons was being considered for adoption by the National Assembly and that similar steps had been taken to protect minorities. While the concept of indigenous peoples did not exist, all minorities and stateless persons were protected by the laws in place. In respect of access to justice, funds had been allocated to provide public access to legal counsel and work on a draft legal defence bill was ongoing. The Truth, Justice and Reconciliation Commission had been established to address the concerns of victims of human rights violations from 1958 to 2005. In particular, a law on victim compensation was being drafted and was expected to be adopted quickly in the National Assembly.

33. Turning to the right of peaceful assembly, he said that demonstrations could be prohibited only if they presented a safety risk. A draft law to prevent prohibition of peaceful assembly had been crafted with input from journalists, civil society and the United Nations High Commissioner for Human Rights and its adoption was pending. The delegation would provide the Committee with a copy and was open to changes the Committee might recommend.

34. In respect of freedom of association and expression, while associations were encouraged to register their establishment with the Government for acknowledgement purposes, no authorization was required to form associations. The radio stations that had been closed had not complied with national regulations. There were a number of radio stations in operation that were critical of the Government. The High Audio-visual and Communications Authority and the National Human Rights Commission were independent from the Government and enjoyed equal standing in its eyes. The composition of the High Authority would change soon and the incoming

officials would likely work more effectively with the National Human Rights Commission. Lastly, efforts were under way to coordinate awareness-raising campaigns with civil society, targeting rural areas in particular. Relations between the Government and civil society had improved markedly and the Government was open to recommendations from its civil society.

35. **Mr. Iwasawa** said that he had served as a government-nominated member of the United Nations Permanent Forum on Indigenous Issues in 2002-2004. Dr. Ayitegan Kouevi, who identified himself as an indigenous Togolese, had served at the same time as a member nominated directly by indigenous organizations. It was therefore difficult to understand how the Government could claim that there were no indigenous peoples in Togo. He would appreciate clarification.

36. **Mr. Neuman** enquired about the possibility of enacting separate fast-track legislation on the right to habeas corpus.

37. **Mr. O'Flaherty** said that he, too, would appreciate clarification as to the existence of indigenous peoples in Togo, in particular in light of paragraph 17 of the concluding observations of the Committee on the Elimination of Racial Discrimination noting that the legal instrument governing property matters was not adequate to guarantee the land rights of indigenous peoples (CERD/C/TGO/CO/17).

38. **Mr. Bouzid** asked how many lawyers there were and whether their numbers were sufficient to meet the demand for legal counsel. He would appreciate it if the delegation could discuss the lack of legislation concerning clients' rights to be accompanied by legal counsel throughout the legal processes.

39. **Sir Nigel Rodley** said that prison conditions were in clear violation of article 7 of the Covenant. While he welcomed measures to improve prison conditions in the long term, he wondered whether the State party was considering a remedy that would bring immediate improvements.

40. **Mr. Hamadou** (Togo) said that he wished to rectify his earlier remarks: under article 302 of the Children's Code, children could not be detained until the age of 15. Turning to the issue of indigenous peoples, he said that Togolese ethnic groups did not meet the criteria of international treaty bodies to be considered indigenous. They were nonetheless protected by the same mechanisms that protected stateless persons and minorities.

41. In respect of the right to habeas corpus, detentions had to be proven arbitrary before the right of remedy was even addressed. The Government was working with NGOs to raise awareness in an effort to combat arbitrary detention. There were approximately 220 lawyers in Togo, all of whom were located in Lomé, for a population of approximately 5 million. Incentives were being offered to encourage lawyers to live outside of Lomé, and legislation emphasizing decentralization was being drafted. The public defence system that provided legal counsel during the sentencing phase of a trial was also being changed. The Ministry of Justice had published a circular informing detainees that they could have access to legal counsel from the moment they were detained. Turning to the issue of prison conditions, he said that measures had been taken to provide for the early release of detainees who had served more than one half their sentence. Other measures to improve conditions were being considered in consultation with NGOs, civil society and development partners.

42. **Mr. Kodjo** (Togo) said that persons who were arrested and held in police custody were entitled to legal assistance under his country's Constitution. The Code of Criminal Procedure, however, had entered into force prior to the adoption of the Constitution and did not stipulate the procedures that lawyers must follow in order to provide such assistance to detainees. In the absence of legislation in that regard, the Ministry of Security and Civil Protection had informed police stations that persons must be granted access to legal counsel within 24 hours of their arrest. Under the revised Code of Criminal Procedure, however, it would be obligatory to inform persons who were arrested of the charges against them, grant them access to legal counsel within one hour of their arrest, and inform them that they had the right to remain silent until their legal counsel was present. The revised Code of Criminal Procedure, when adopted, would also specify the judicial authority before which detainees should be brought and include provisions on areas of law that were not yet fully addressed by the legal instruments in force.

43. **Ms. Wilson de-Souza** (Togo) said that the Ministry of Human Rights, Consolidation of Democracy and Civic Training was endeavouring to deepen its collaboration with civil society

organizations and that, in 2011, some of those organizations would be invited to participate in certain Ministry-supported activities.

44. **Ms. Chanet** said that, within the framework of Togo's obligations under the Covenant, the circulars issued by the Ministry of Justice were insufficient and afforded detainees only partial rights. It was unnecessary to completely overhaul the Code of Criminal Procedure when it would be sufficient to introduce a single provision guaranteeing the right to legal assistance within one hour of arrest. Persons who were arrested must be brought before a judge at the earliest opportunity for a determination as to the legality of their detention, particularly when the arrest occurred in connection with a criminal offence. It was a misinterpretation of the Covenant to claim that detainees could not be granted legal assistance until a determination had been made as to whether or not their detentions were arbitrary. In that connection, existing problems must be dealt with urgently and not postponed until an all-encompassing and unnecessary law was enacted for that purpose at some point in the future.

45. **Mr. Bouzid** noted that the official language of Togo was French. He asked whether interpretation into other languages was provided for detainees in rural areas who did not understand French, and whether an authority paid for those interpretation services.

46. **Mr. Hamadou** (Togo) said that a revised Code of Criminal Procedure would soon be adopted and that it was unlikely that any new legislation on, inter alia, legal assistance for detainees could be adopted before that Code entered into force. It was not that the Government lacked the will to adopt new laws on legal assistance for detainees, but simply that it was focusing on the adoption of existing draft laws rather than on drawing up completely new legislation. His Government did not deny that arbitrary detentions occurred in Togo and was striving to develop specific, practical mechanisms to address that issue.

47. Although the official language of Togo was French, State-funded interpreters translated court proceedings into other languages for detainees.

48. **Ms. Wilson de-Souza** thanked the Chairperson and the members of the Committee on behalf of the Togolese delegation, and said that the delegation would consider any recommendations that the Committee put forward.

49. **The Chairperson** welcomed the frank report that had been submitted by Togo. Although that report had been submitted five years late, it was hoped that future reports would be submitted on time. She acknowledged that the country's human rights situation had deteriorated as a result of a socio-political crisis that had lasted over 20 years. However, it was clear that Togo was making every effort to improve its human rights record. Positive developments in that regard included the abolition of the death penalty and the recent adoption of a press code. Committee members had noted with concern, however, that a large number of draft laws still needed to be adopted. In particular, Togo needed to adopt a revised Code of Criminal Procedure and an Individual and Family Code at the earliest opportunity.

50. There were no independent mechanisms through which victims of torture could seek redress. Prison conditions remained deplorable and the Committee would not be satisfied on that front until promised improvements had been implemented. Human rights violations that had taken place after the 2005 elections had still not been fully investigated and, in that connection, detainees continued to be held without charge. Pending cases must be addressed as a matter of urgency in order to dispel the impression that a culture of impunity was tolerated in Togo. The draft law on freedom of assembly and the draft law on demonstrations needed to be amended to ensure that they fully complied with the Covenant. Furthermore, additional guarantees were required with a view to strengthening the independence of the High Audio-visual and Communications Authority.

51. *The Togolese delegation withdrew.*

Organizational and other matters (*continued*)

Working methods

52. **Mr. Iwasawa** said that, in his capacity as Chairperson of the Committee, he had met with the President and the Deputy Registrar of the European Court of Human Rights in Strasbourg in January 2011 with a view to furthering cooperation between the Court and the treaty bodies vis-à-vis the registration of cases. A mechanism had been established and contacts appointed to verify case registration status. The talks had also touched on how to prevent overlap between the mandates of the Court and the Geneva-based treaty bodies.

53. He had also attended a Geneva meeting of the Inter-Committee Meeting Working Group on Follow-up. He drew attention to a document on the outcome of that meeting, which had been distributed informally to Committee members, and said that most of the recommendations contained therein were in alignment with established practices of the Committee. Inter alia, the Working Group had recommended that common procedural guidelines should be drafted to complement existing rules of procedure and practices on follow-up, and that, in their decisions, all Committees should request State parties to publish treaty body decisions, translate them into official languages and distribute them widely. All Committees should consider reducing the burden on the rapporteurs on follow-up, possibly through the establishment of working groups or the appointment of co-rapporteurs. The Working Group had also recommended that all Committees should include the provision of information on follow-up to decisions as a standing item to be announced, as appropriate, during press conferences, and that list-serve correspondence, which provided information on new treaty body jurisprudence, should include key words next to the number and name of each decision. State parties to treaties should, moreover, provide information on how they implemented treaty body decisions in their domestic legislation. The Working Group also recommended that Committees should continue to take steps to improve the quality of their decisions, carry out more country visits for follow-up purposes and engage in intersessional follow-up meetings with States parties to that end.

The meeting rose at 1 p.m.